

Message Text

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TO AMEMBASSY LUSAKA

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SUBJECT: RIGHT TO WORK OF SPOUSES OF FOREIGN DIPLOMATS

REF: (A) LUSAKA 2017 (7 NOV. 73)

(B) LUSAKA 340

1. VIENNA CONVENTION ON DIPLOMATIC RELATIONS (TO WHICH US, BUT NOT ZAMBIA, IS PARTY) NEITHER PROHIBITS NOR PROVIDES FOR ACCESS TO LOCAL EMPLOYMENT BY FAMILY MEMBERS OF EMBASSY OFFICERS.

2. ARTICLES 31(1), 37(1) AND (2) CITED IN GRZ NOTE (REF (A)) RELATE TO IMMUNITY OF DIPLOMATIC OFFICERS AND MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF AND THEIR FAMILIES. (A) ARTICLE 31(1) REFLECTS DIPLOMATIC OFFICER'S IMMUNITY FROM CRIMINAL JURISDICTION AND CIVIL JURISDICTION EXCEPT WITH REGARD TO LEGAL ACTIONS INVOLVING HIS PERSONAL IMMOVABLE PROPERTY IN RECEIVING STATE, HIS STATUS IN HIS PRIVATE CAPACITY AS A LEGATEE, ADMINISTRATOR OR EXECUTOR OF AN ESTATE, OR HIS "PROFESSIONAL OR COMMERCIAL ACTIVITY" IN THE RECEIVING STATE OUTSIDE HIS OFFICIAL FUNCTIONS. ARTICLE 37(1) PROVIDES SAME IMMUNITY FOR OFFICER'S FAMILY

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MEMBERS. (THOUGH "PROFESSIONAL OR COMMERCIAL ACTIVITY" NOT

PRECISELY DEFINED IN CONVENTION. TERMS WOULD APPEAR
APPLICABLE TO ALL SALARIED EMPLOYMENT OUTSIDE EMBASSY.)

(B) ARTICLE 37(2) STATES THAT ADMIN. AND TECHNICAL STAFF
MEMBERS AND THEIR FAMILIES SHALL HAVE FULL CRIMINAL
IMMUNITY BUT SHALL HAVE NO CIVIL IMMUNITY WITH REGARD TO
ACTS PERFORMED OUTSIDE THEIR OFFICIAL DUTIES. (THIS
BLANKET EXCEPTION IS BROADER THAN THE SPECIFIC EXCEPTIONS
AFFECTING DIPLOMATIC OFFICERS.)

3. FOREGOING ARTICLES IF ADHERED TO IN ZAMBIA WOULD
THEORETICALLY EXPOSE EMBASSY OFFICER'S FAMILY MEMBERS TO
GRZ CIVIL AND ADMINISTRATIVE JURISDICTION WITH REGARD TO
ALL PROFESSIONAL/COMMERCIAL ACTIVITIES OUTSIDE OFFICIAL
FUNCTIONS OF EMBASSY. (DEPT. UNAWARE, HOWEVER, OF ANY
INSTANCES IN OTHER COUNTRIES WHERE SUCH JURISDICTION HAS
ACTUALLY BEEN APPLIED IN SUCH CASES.) THESE PROVISIONS,
HOWEVER, HAVE NO APPLICATION TO QUESTION OF ENTITLEMENT
TO ENGAGE IN SUCH ACTIVITIES. ARTICLE 42 OF CONVENTION
PROHIBITS DIPLOMATIC AGENTS FROM ENGAGING IN PROFESSIONAL
OR COMMERCIAL ACTIVITY FOR PERSONAL PROFIT. DRAFTING
HISTORY OF CONVENTION DOES NOT CLARIFY EXTENT OF THIS
PROHIBITION OR WHETHER FAMILY MEMBER COULD BE INCLUDED,
BUT IT DOES NOT SEEM UNREASONABLE TO DEPARTMENT FOR
RECEIVING STATE TO IMPOSE SOME RESTRICTION ON OUTSIDE
ACTIVITIES OF FAMILY MEMBERS. AS NOTED, HOWEVER,
CONVENTION PROVIDES NEITHER LEGAL BASIS FOR BARRING FAMILY
MEMBER'S ACCESS TO PROFESSIONAL ACTIVITIES NOR LEGAL BASIS
FOR CHALLENGING GRZ PROHIBITION.

4. IN SOME OTHER COUNTRIES IN WHICH SAME PROBLEM HAS
ARISEN, SUCH AS FRANCE, DEPT. HAS AUTHORIZED WAIVER OF
FAMILY MEMBER'S DIPLOMATIC "PRIVILEGES" IN CONNECTION WITH
ACCEPTANCE OF EMPLOYMENT, E.G. EXEMPTION FROM TAXES ON
INCOME FROM EMPLOYMENT, SOCIAL SECURITY PARTICIPATION,
ETC. AS NOTED, THOUGH DEPARTMENT HAS TAKEN POSITION
THAT INVOLVEMENT IN OUTSIDE EMPLOYMENT WAIVED CIVIL
IMMUNITY AS PROVIDED IN CONVENTION, WE ARE AWARE OF NO
CASES IN WHICH FAMILY MEMBERS HAVE BEEN SUBJECTED TO
JURISDICTION IN ACTIONS ARISING FROM OUTSIDE EMPLOYMENT.
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5. SUGGEST EMBASSY EXPLORE WITH APPROPRIATE GRZ OFFICIAL
SCOPE OF ZAMBIAN LAW ON THIS MATTER. EMBASSY MAY ALSO
INQUIRE WHETHER FAMILY MEMBERS MIGHT BE PERMITTED ACCESS
TO EMPLOYMENT IF DIPLOMATIC PRIVILEGES WAIVED. KISSINGER

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